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November 2, 2020

**VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

**Re: *Petition for Rulemaking to Permit MVDDS Use of the 12.2-12.7 GHz Band for Two-Way Mobile Broadband Service, RM-11768***

Dear Ms. Dortch:

Representatives of RS Access, LLC (“RS Access”) met with representatives of the International and Wireless Telecommunications Bureau on Oct. 29, 2020. Attending for the FCC were Matthew Pearl, Blaise Scinto, Madelaine Maior, Peter Daronco, Troy Tanner, Ethan Lucarelli, Tim Hilfiger, Simon Banyai, and Merissa Velez. Attending on behalf of RS Access were V. Noah Campbell, CEO; Trey Hanbury and Tom Peters of Hogan Lovells US LLP; and Daniel Shuchman and Michael Gerstner of MSD Capital, L.P.

RS Access explained the benefits of moving expeditiously to unlock the ingenuity and enterprise of American business in the 12 GHz Multichannel Video Data Distribution Service (MVDDS) band. Since the Commission established the 12 GHz operating constraints nearly two decades ago, technology has transformed dramatically, the market has evolved, and the demand for wireless broadband has exploded. RS Access and other licensees in the MVDDS band have deployed meaningful service to the public within the extremely limiting constraints of the existing service rules.<sup>1</sup> However, the regulatory prohibitions on two-way communications and power limits at less than one-tenth the power of a present-day smartphone, now act as arbitrary and irrational impediment to maximizing utility of the 12GHz band. Other co-primary users have sought to exploit this archaic situation for their own gain.

The time has come to revisit these constraints and determine how to make more intensive use of co-primary MVDDS in this band. A notice of proposed rulemaking will solicit public comment on a few straightforward issues. How should the Commission update its 12 GHz MVDDS rules to respond to an array of technological and market developments that have rendered the present constraints impractical, if not obsolete? Given that the Commission has already auctioned terrestrial rights at 12

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<sup>1</sup> See, e.g., ULS File No. 0008742311, RSA/MDS Substantial Service Showing Supplement, 26-30 (July 26, 2019) (deploying MVDDS transmitter locations and receive-site equipment to connect the Emergency Operations Training Center and other training field stations at Texas A&M University’s Disaster City, a 52-acre mock community that offers customized training to first responders); see also, e.g., ULS File Nos. 0009264045 and 0009264048, RS Access, LLC Pending Request for Emergency Special Temporary Authority in Batesville, Mississippi (Oct. 16, 2020) (requesting special temporary authority to provide two-way connectivity to a transportable remote telehealth hub that will treat patients in rural Mississippi during the COVID-19 pandemic).

GHz, how can the 12.2-12.7 GHz frequency quickly be adapted to meet the nation's urgent 5G demands? And how should the Commission allocate any new flexibility governing operations in the 12.2-12.7 GHz band?

Initiating a proceeding to consider rule changes is as expected as it is desirable. When it authorized co-primary non-geostationary orbit fixed-satellite service licensees to operate in the band, the Commission put each NGSO FSS licensee, including SpaceX, on notice that the use of the 12.2-12.7 GHz band remained contingent on the outcome of this proceeding.<sup>2</sup> While SpaceX and others now profess surprise that the Commission would consider bringing outmoded rules into line with present-day technologies, such as small cells, directional antennas, and cloud-based databases, these claims have no basis in fact.

After four years of working to impede, delay or otherwise prevent reform, the opposition's latest gambit is to delay consideration of these issues by discouraging the Commission from soliciting formal public comment or by taking a years-long detour into a notice of inquiry. But dodging questions about regulatory reform for the 12 GHz band is wrong – both for present-day licensees and the American public. The Commission has no shortage of information on the subject of 12 GHz reform. Nor is there any shortage of ideas on how the Commission might proceed to implement reform. The potential benefits of 12 GHz reform are great, and the risk of soliciting public comment about how best to realize the full promise of the 12 GHz band is non-existent. The time to act is now.

Sincerely,

/s/ Trey Hanbury

Trey Hanbury

Partner

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CC: Matthew Pearl

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<sup>2</sup> See *Space Exploration Holdings, LLC Application for Approval for Orbital Deployment and Operating Authority for the SpaceX NGSO Satellite System et al.*, Memorandum Opinion, Order and Authorization 33 FCC Rcd 3391, n.88 (2018) (“The MVDDS 5G Coalition expresses concerns regarding protection of current and potential future MVDDS operations in the 12.2-12.7 GHz band. See Letter from MVDDS 5G Coalition to Marlene H. Dortch, Secretary, FCC, (dated March 6, 2018). Such concerns are addressed in paragraphs 40(e) and 40(r) below, requiring SpaceX to comply with established pfd limits in this band and subjecting the authorization to modification to conform it to any future rules or policies adopted by the Commission in pending rulemaking proceedings. See, e.g., Petition of MVDDS 5G Coalition for Rulemaking, RM-11768 (filed Apr. 26, 2016).”); *id.* at ¶¶ 40(e)-(r) (“Operations in the 12.2-12.7 GHz (space-to-Earth) frequency band are authorized up to the power flux-density limits in 47 CFR § 25.208(o) and Article 21 of the ITU Radio Regulations, and up to the equivalent power flux-density requirements of Article 22 of the ITU Radio Regulations, as well as Resolution 76 (Rev. WRC-15) of the ITU Radio Regulations . . . This authorization is subject to modification to bring it into conformance with any rules or policies adopted by the Commission in the future. Accordingly, any investments made toward operations in the bands authorized in this order by SpaceX in the United States assume the risk that operations may be subject to additional conditions or requirements as a result of any future Commission actions.”).

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